IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7415 OF 2006

WRIT PETITION NO. 7416 OF 2006

WRIT PETITION NO. 7417 OF 2006

WRIT PETITION NO. 7418 OF 2006

Sanjana S. Joshi. .. Petitioner.

vs.

Sanjeev R. Joshi. . .. Respondent.

Mr. A.S. Khandeparkar with V.S. Gole

for petitioner.

Mr. S.J. Ghagare for Respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 14th December, 2006.

P.C.

. All these four petitions are filed by the wife. The marriage of the petitioner and the respondent husband was solemnised on 6.4.2004. It is not in dispute that on the 11th of the same month they had separated and are staying apart since then. It is also not in dispute that there was no consummation of marriage. The respondent filed a petition before the Family Court for a decree of nullity of marriage on the ground that the

respondent is impotent which has resulted in non-consummation of marriage. During the pendency of the said petition, the petitioner wife moved an application and claimed maintenance under Section 24. Initially, the Judge Family Court granted interim maintenance in the sum of Rs. 3000/- as it was demonstrated and urged by the petitioner wife that her monthly income is Rs. 5,000/-. At a later point of time, the respondent husband moved an application seeking modification of the order by contending that the wife has misled the court by claiming that her salary is Rs. 5,000/- whereas in fact the salary of the petitioner was in the range of Rs. 13,000/- to Rs. 14,000/- per month. The respondent husband collected the evidence in regard to the income of the wife in the form of copies of bank statement and monthly deposits of her salary. On consideration of the material placed on record by the respondent husband the Family Court concluded that the salary of the petitioner wife from October 2005 to December, 2005 was Rs. 12,300/- whereas from January, 2006 onwards the same is Rs. 13,200/-. It is also relevant to note that before the Family Court the statement of salary account of the wife was admitted to be correct. No doubt the wife asserted that her service was temporary in nature. As the court was convinced that the order of interim maintenance was snatched from it by misrepresentation, the court proceeded to recall the

order passed earlier granting interim maintenance in the sum of Rs. 3000/-. This order is challenged in writ petition no. 7415 of 2006.

2. Perused the order. It does not call for any interference more so in exercise of writ jurisdiction. As the Judge, Family Court found that by misrepresentation an order of maintenance was obtained, an order recalling the order of payment of maintenance cannot be faulted. Prima facie, there is nothing on record to indicate any illegality or impropriety in the order impugned in this petition. Hence, the writ petition stands summarily dismissed.

3. However, at this stage the learned counsel appearing for the petitioner wife submits that the petitioner is not getting any monthly salary but is paid remuneration for hours of service rendered, etc. He seeks permission to make an appropriate application before the trial court bringing all the facts to the notice of the trial court and for seeking appropriate order. It shall be open for the petitioner to make an appropriate application if permissible in law.

4. In Writ Petition No. 7416 of 2006 an objection is raised to the order passed by the Judge, Family Court, allowing the application moved by the husband and directing the parties to undergo

a medical examination at the hands of the medical board constituted by the State Govt. Perusal of the order reveals that the main issue raised in the petition is about the capacity of the wife to perform coitus. It is the case of the husband that the marriage needs to be annulled by a decree of nullity of the marriage on the ground that the marriage has not been consummated due to the impotence of the respondent wife. That is the main issue which is to be addressed by the Family Court. An expert evidence touching the said issue being found very much necessary by the trial court, both the parties are directed to submit themselves for the examination with a view to ascertain the fact about the capability of the parties to perform sexual act and thus the marriage counsellor who is a lady officer is appointed to facilitate proper implementation of the direction issued by the court in that regard. The objection to this order is two fold: (i) that the costs of the medical examination should be borne by the husband and (ii) as far as possible the medical board should comprise of lady doctors, if available. The learned counsel for the husband has no objection in that regard. Hence, the impugned order stands modified to a limited extent that the examination of the petitioner wife shall be conducted by the medical board as far as possible comprised of lady doctors, if available.

5. In writ petition no. 7417 of 2006 another order passed by the trial court is challenged. The same is passed below Exhibit-16. The petitioner wife made an application for framing of issues. Rejecting the said application the trial court has observed that by virtue of Section 17 of the Family Court Act only points for determination are required to be framed and concise reasons need to be given for the final conclusion. Section 10 of the Act confers unfettered powers on the court to evolve its own procedure for ascertaining the truth and Section 50 obliges the Court to record substance of the evidence. Having regard to the entire scheme of the Family Court Act, the elaborate procedure which is time consuming is given a go by. Having regard to the totality of facts and the scheme of the Act, the application moved by the petitioner wife for framing of issues has been rejected. Nonetheless, the Judge Family Court is conscious of the fact that the points for determination will have to be framed. There is no question of any party being taken by surprise as the main issue which crops up for adjudication is in regard to the impotency of the respondent wife on which ground a decree for nullity of marriage is sought.

6. Perused the order. No interference is called as the order dos not suffer from any patent illegality.

7. Yet another order passed by the Judge, Family Court is challenged by filing writ petition no. 7418 of 2006. The husband had produced before the Family Court Video and Audio tapes which according to the husband, depict the conversation between the parties and throws light on the question involved in the petition. The Judge, Family Court appointed marriage counsellor by name Mrs. S.P. Chavan as Court Commissioner to verify and ascertain the authenticity of the tapes, after calling upon the petitioner to submit transcription of the tapes on record. The counsellor is then directed to view and listen the cassettes in presence of both the parties and their advocates. The learned counsel for the petitioner wife submits that when the viewing of the cassettes was scheduled, the petitioner could not remain present. The petitioner apprehends that now the petitioner may not be shown the said cassettes. The apprehension is ill-founded. The order on the face of it does not disentitle the petitioner wife to see the cassettes. It is clarified that if the petitioner wife makes an application before the Family Court, the Family Court shall in turn direct the marriage Counsellor to permit the petitioner wife to view the video tapes in her presence.

. At this stage, the learned counsel for the

respondent husband submits that viewing of the tape is scheduled on 21.12.2006 by the Marriage Counsellor. The next date in the Family Court is on 21.12.2006 and the respondent husband will deposit the cassettes with the Family Court on 21.12.2006. Thus, it will be feasible for the petitioner wife to view the tapes on 21.12.2006.

8. In view of the statement made by the learned counsel for the husband, this petition is not pressed hence disposed of as not pressed.

(A.P. Deshpande, J.)